

Exhibit 39

(Audio 3)

MR. MADOFF: Obviously, first of all, this conversation never took place, Mark, okay?

MR. VIJAY: Yes, of course.

MR. MADOFF: All right. There are a couple of things that, you know, could come -- well, I don't know if they'll come up or not but let me just tell you how we -- information that we have given out in the past whenever we're asked about our relationship, our relationship with any of these funds is, number one, we really have never seen any of your documentation, you know, like the stuff that you send out to your clients, you know, any of that stuff because we never want to be looked at as the investment manager or that we are out, you know, soliciting or doing any marketing for the fund and so on, so in the past if we've ever been asked about what our role is with any of these types of funds, it has always been that we are the executing broker for these transactions and that you use a

1 proprietary trading model that we -- that is
2 ours that basically sets the -- that, you
3 know, has certain parameters built into it
4 which have been approved by you and then
5 that's part of the trading directive that
6 you've seen.

7 MR. VIJAY: Right.

8 MR. MADOFF: Okay, the, now the -- so --
9 and by the way, on the trading directives,
10 the one that you have -- Mark, the one that
11 you sent me a copy of, which is an old one,
12 all right -- we're going to send you up --
13 actually, we'll messenger it up to you, Mark,
14 today, a new trading authorization directive
15 that we had actually a couple of years ago,
16 which basically is the same thing except it
17 took the -- they said the other day the
18 options are no longer part of the model. The
19 options are separate and there are standing
20 instructions for the models. They have the
21 same parameters built into it but it has been
22 broken off as part of the model a few years
23 -- a couple of years ago, actually fairly
24 soon after we gave you this other one, and

1 the reason we did that was because the
2 intellectual property that's in the equity
3 piece of it, the first piece of it, is stuff
4 that we feel and that our lawyers feel is our
5 property and we could always claim it was our
6 property from a -- so that nobody else can
7 use that but the options piece of it really
8 is too broad that we would never be able to
9 actually successfully claim that that's a,
10 our own intellectual property if somebody
11 else wanted to use that, so we basically
12 split it off from the model, so the equity is
13 a part of the model. The options are not
14 part of the model. It's important, so the --
15 but you have to have -- we have to have
16 standing instructions on the model -- I mean
17 on the option side as well so that we're not
18 deemed to be, you know --

19 MR. VIJAY: Right.

20 MR. MADOFF: Okay, so, if you ever get
21 into any conversations about the model, it's
22 for the equities. The options are not part
23 of the model. That's just -- there are
24 standing instructions of what the parameters

1 of the options are, and then basically
2 they're identical pretty much but they're not
3 -- as I say, it's not part of the model and
4 that's important, okay. So I'll send you up
5 the new trading instructions today and also
6 the standing instructions for the option
7 side.

8 MR. VIJAY: Okay, good.

9 MR. MADOFF: They'll only respond to that
10 if for some reason they ask you what -- they
11 ask you about how the, you know, strategy
12 gets implemented and so on. The other thing
13 that is on the allocation as to how, you
14 know, we know how much monies to allocate,
15 basically the response that we've always
16 given in the past is the fund allocates a
17 certain amount of monies to us that says
18 okay, this is how much we want to invest and
19 it has been pretty much, you know, the same
20 amount, all right, and then when we liquidate
21 -- so if we have for argument sake \$4 million
22 that we're -- that's been allocated to us or
23 whatever -- \$1 million has been allocated to
24 us and the -- and we liquidate the

1 transactions, okay, so now we go from fully
2 invested to now we're sitting in fashion, all
3 right. That amount -- we log that amount and
4 we know that the next time we see a -- we see
5 a -- we decide that we want to go into the
6 market we start to work with that -- with
7 that -- what the last amount was, all right,
8 and the only time that would change would be
9 if you -- if the fund gets, you know, a
10 redemption or whatever it is and then they --
11 what would typically happen is the investment
12 manager calls us and says, okay, we want to
13 -- you know, we need -- we're taking a
14 million dollars away from the allocation
15 because we have redemptions, or whatever it
16 is, and then we adjust the figure and we're
17 working with the million dollars less. So,
18 you -- and the same thing would work if in
19 fact you wanted to send in additional monies.
20 Again, the investment manager is the one that
21 tells us how much to add to the strategy or
22 subtract from the strategy, and that's done
23 basically by a phone call. Okay?

24 MR. VIJAY: Okay.

1 MR. MADOFF: Because that's the way we've
2 always responded to any of those questions.
3 Let me just see if there's -- I doubt they'll
4 get into that, but they -- you never know
5 with these guys, so it's basically that, you
6 know, that Madoff uses whatever the last
7 amount that he liquidated for the fund and
8 that's the new amount that he would invest
9 unless money is brought in and taken out and
10 then that's -- we get a phone call from the
11 investment manager and change the allocation.
12 Okay, so I think that's that. Let me look at
13 my notes, okay. The -- okay, okay.

14 MARK: Who makes that phone call on it?
15 Is that Dan calling over to Madoff or do you?

16 MR. VIJAY: I think at this point it's
17 Jeffrey making that phone call.

18 MARK: When we're going to take money
19 out?

20 MR. VIJAY: Yeah, when we -- exactly,
21 when the contributor or redeem. I mean I'll
22 actually send the written instructions. It
23 will be a wire request.

24 MARK: Okay, good.

1 MR. MADOFF: The best thing to do is not
2 get involved with what you said, written
3 instructions, if possible because any time
4 you say you have something in writing they
5 ask for it.

6 MR. VIJAY: Okay.

7 MR. MADOFF: So, the best thing to do is
8 just say it's a phone call. That's what we
9 said it is, we get contacted by somebody at
10 Fairfield, somebody -- the investment manager
11 or Jeff Tuck or whatever it's called but
12 that's the way it has basically been done for
13 the most part, at least for the time that we
14 -- you know, if we answered this question,
15 you know, a year or so ago, and that's
16 basically the way pretty much everybody
17 operates. You know, they make a phone call
18 and say, we need to withdraw a certain amount
19 of money and we want to add a certain amount
20 of money and that's it, because typically if
21 you're adding money, you know, we'd have to
22 okay it. We may not take it or we may take
23 it. So, you know, that's basically -- you
24 know, also when you speak to these guys, by

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1 the way, you're not supposed to, you know,
2 sort of -- you don't have to be exact on this
3 stuff because it's not -- you know, no one
4 pays attention to these types of things or
5 who calls or who doesn't or who remembers who
6 calls. It's basically, you know, more
7 casual. I mean, the idea is that it's -- is
8 that we're not the one that's making that
9 decision how much to -- I mean, you know --
10 you know, we're not the one that's operating
11 the fund. That's the issue that they always
12 try and determine as to what the role of the
13 various parties are, is the broker
14 controlling the fund is the investment
15 manager controlling the fund.

16 MR. VIJAY: All right. If they get into
17 the question of these trading authorizations
18 and these operating guidelines, you know,
19 it's a model that you develop that we've
20 reviewed and approved and that should be the
21 stance rather than -- you know, than anything
22 else.

23 MR. MADOFF: Yeah, I mean, it's you know
24 they have seen trading author -- you know,

1 they have seen trading authorization. They
2 saw the -- when they were in to do our
3 examination a year -- you know, I don't know
4 when that was, nine months ago or whatever,
5 they saw the -- they saw that there's -- that
6 the trading -- the new one that I'm sending
7 you, the trading authorization that doesn't
8 have the options as part of the model.

9 MR. VIJAY: Mm-mm.

10 MR. MADOFF: Because we -- you know, we
11 had said that the options were part of the
12 model years ago, but it's now not part of the
13 model, and you know the reason we took it out
14 they were twofold. Number one, it was that
15 we didn't want it to be part of the model
16 because we didn't want it -- we didn't want
17 the options to be -- to taint the
18 intellectual property of the equity piece,
19 but just as importantly as the model on the
20 option -- the model was designed really for
21 the equity side, not for the options and the
22 options the problem with the model with the
23 options is it didn't give us all the data --
24 it didn't have all the data that we needed to

1 determine some of the -- when it came to
2 executed because it didn't have certain
3 factors in that -- in the model, like
4 liquidity and so on and so forth, so that's
5 done -- so the options are done separately.
6 And the options, by the way, you know your
7 documents you put down that they're down
8 simultaneously. They're really not done
9 simul -- even if you look at the trading
10 authorization, the beginning, it says an
11 attempt to establish the options. The
12 options get put on, you know, relatively, you
13 know, close to when we do the equities, but
14 they're not -- you know, it's not like it's a
15 simultaneous thing, because option contracts
16 aren't negotiated that way.

17 MR. VIJAY: So it will be -- I mean, it
18 will be at some point throughout the day if
19 --

20 MR. MADOFF: Well, yeah, yeah. Well,
21 those -- they saw that because they have the
22 -- they got your confirmations and so on.

23 MR. VIJAY: And so that could conceivably
24 be a few hours between the completion of the

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MR. MADOFF: Yeah, right.

MR. VIJAY: -- (inaudible) and the options. Is it true that your -- you know, you're attempting to secure the put hedge prior to actually executing options? In other words, you're going out to your eight to twelve or so counter parties and trying to say that, okay if --

MR. MADOFF: No, no, because this is the thing you always have to understand that they -- that you guys are not -- are not part of the execution piece of this -- of this strategy and that's important. In other words, the -- because they -- the concern that they have with any strategy that is implemented for another party, like a fund from the executing broker is their concerns are is there informa -- do you know when -- when the strategy is going to be employed ahead of time or does anybody know it ahead of time because then there's the issue of is there a possibility for somebody to front run an order. So if -- so we basically -- the

1 only ones that know when we're going to
2 execute the strategy and whether it be going
3 in or going out is us, is Madoff, all right.
4 That you'll get the information -- you know
5 when you've -- you know when the strategy has
6 been implemented or exited when you get the
7 confirmation because if we -- and it's the
8 same thing with the counter parties, you
9 know. They -- we have an -- we know that
10 we're going to be able to put on a column,
11 which is what this is because you can always
12 put on a column. It's just a matter of
13 determining the price. You're either going
14 to pay or you're going to pay less, but
15 eventually we're going to be able to
16 establish that --

17 (Phone Rings.)

18 MR. MADOFF: Hold on one second. --
19 Yeah, hold on one second. Sorry. So the
20 issue is, look, as far as you're concerned,
21 the fund has allocated certain amount of
22 money to go into a specific strategy. You
23 know what the -- you've approved the
24 parameters of the strategy and I've agreed to

1 follow those. That's the trading
2 authorization directive is it says, okay,
3 these are the strategies -- this is the
4 strategy. The model sets the size of the
5 order, the stock and the price and that's it,
6 and then once you get that execution then
7 your job is to, as an investment manager I
8 guess, is just to monitor that the -- that
9 there were in fact the right securities in
10 there that, you know, it followed the
11 instructions or the model that you didn't buy
12 gold, you bought IBM and General Motors and
13 to track the performance of the strategy, but
14 the -- if in fact you were involved in -- I'm
15 sorry, just hold on because I'm the only one
16 here, okay?

17 (Phone Rings.)

18 MR. VIJAY: Okay, no worries.

19 (On Hold.)

20 MR. MADOFF: Okay, I'm sorry. Can you
21 just hold on for one second so I can take one
22 other another call?

23 MR. VIJAY: Sure, I'll wait here.

24 (On hold.)

1 MR. MADOFF: I'm sorry, if I get anymore
2 solicitations for charity I'm going to kill
3 myself. Okay, I'm sorry, so what I was
4 saying was that the -- I mean, that's the
5 rule. We're the executing broker. It's our
6 strategy. You guys are just monitoring --
7 monitoring what the effect is because the
8 question is always revolving -- always come
9 up about -- and the concern of the commission
10 or any regulator as it relates to hedge funds
11 and executing brokers is that there -- is
12 there an opportunity for the fund or one of
13 their other funds or entities to front run an
14 order. Like if they know that we're getting
15 into the market are they transmitting that
16 information to somebody else or are they --
17 are they using it themselves. So the -- and
18 even though that would obviously be counter
19 productive to the fund overall, but their
20 concern is is maybe the fund is -- but are
21 some of the employees of the fund if they get
22 that information. It's the same thing with
23 us. We have to be very careful that nobody
24 in our organization sees any of the trading

1 that we do, whether it be for the firm's own
2 account, whether it be for clients' own
3 accounts and so on. So the -- you know, the
4 question probably will come up is -- does --
5 does Madoff call you and tell you he's going
6 into the market or getting out of the market
7 or that he started getting into the market
8 and so on. Now obviously there have been
9 transactions taking place over a series of
10 days which it does, you'll know eventually,
11 but basically you're given the confirmations
12 to it -- by the time you're getting the
13 confirmation two or three days we're
14 basically finished anyhow.

15 MR. VIJAY: Mm-mm.

16 MR. MADOFF: Okay?

17 MR. VIJAY: Okay.

18 MR. MADOFF: So that's the issue. Now
19 and all of this is -- is the case. It's not
20 like you're telling them something that's not
21 the case, but as I say that's -- that's the
22 major concern that these people have and
23 probably why they want to know who is it
24 that's implementing the strategy. Is it us

1 implementing the strategy? Is it you
2 implementing the strategy? And obviously
3 we're the ones that have to be -- you know,
4 we have the time and a price discretion, you
5 just the -- you know, you've -- you've --
6 this model actually, you know, picks the
7 number of shares and the stock if that's the
8 case because it's a very tight parameter, so
9 you know that -- that's -- that's part of the
10 -- that's part of the exemption for the
11 discretionary issue from the SEC regs. So it
12 used to be years ago that, you know, you had
13 to give a particular order and a particular
14 security, but then they've changed that and
15 they've -- to now -- so that -- because
16 everybody was using basket strategies and
17 like would it be index arbitrage or anything
18 else like that where there are actually
19 formulas and models that are generating these
20 trading strategies, and this is not -- we're
21 not the only one that does this type of
22 strategy. So the brokers have to have -- you
23 know, to have these what they call not held
24 order, these working orders, they have to

1 have the flexibility to execute a basket of
2 securities and the baskets are going to be
3 different denominations based upon -- based
4 upon models.

5 MR. VIJAY: Right.

6 MR. MADOFF: By the users of these
7 things. So basically the issue from them,
8 and probably the most important issue is that
9 Madoff is the one that implements the
10 strategy. Yes, we know that he has certain
11 parameters that he can only buy certain
12 securities and certain amounts based upon a
13 model. The time and price of when he
14 executes the strategy is his decision, and we
15 don't find out about it until after the fact.
16 And you don't have to actually go out say so
17 there's no front running possibility.

18 MR. VIJAY: It will be understood, yeah.

19 MR. MADOFF: Yeah, but you don't want to
20 plant any seed in their head -- but they'll
21 know that. That's -- if they know, yes, we
22 -- we only -- we don't get any information
23 ahead of time then that's really what they --
24 what they want -- they want to know.

1 MR. VIJAY: I mean, if as part of their
2 larger inquiry if they're interested in just
3 the control of that or is it a matter of
4 protecting that information, not that it -- I
5 mean, whether it goes out to FCG in advance
6 or even internally, I mean, it would be good
7 to understand some of the controls that are
8 (inaudible) that you have in place, but also
9 separates, you know, the information flow
10 from your kind of managed account.

11 MR. MADOFF: Basically -- you could
12 basically -- you know, as I say if that --
13 they know that already because they've looked
14 at -- when they come in to do exams for us,
15 all right, they've -- they make sure that
16 there are Chinese walls -- that we have
17 Chinese walls established between our market
18 making side and our -- and our proprietary
19 side of the room and be -- and also from the
20 institutional orders. So they know that we
21 have Chinese walls. Every brokerage firm has
22 to have Chinese walls established between the
23 various lines of their business. All right,
24 so they know that because, you know, that's

1 it. All right, what they don't know is what
2 Chinese walls you have, all right, in your
3 organization which is -- but that you're okay
4 because you're not -- to my knowledge in any
5 of your funds you're not executing any
6 transactions and you're getting your -- you
7 know, well, first of all in your other funds
8 you probably have no idea what they're buying
9 and selling period, you know, as far as
10 individual securities, but you -- you know,
11 although I don't know. But you -- but
12 there's probably nothing you could do with
13 these funds to run in front of their orders.
14 One of the reasons that these funds never
15 disclose or at least the old line funds never
16 disclosed to their investors what they're
17 buying and selling until after the fact is
18 they don't want them -- you know, they don't
19 want them having any of this information.
20 Part of the problem in this whole area with
21 these -- with these new style funds that are
22 out, these one -- these guys that claim they
23 give them transparency all the time so that
24 they -- they, you know, it's basically the

1 small or new funds where they -- where they
2 told their investors, you know, what they're
3 buying, what they're selling. They look at
4 that as being, you know, very transparent and
5 they look at that as an advantage to their
6 clients and that's true that the client knows
7 that what he's buying and selling so he's not
8 all of a sudden going to find out he bought
9 potato futures when he thought the fund was
10 investing in equities or something. The
11 problem with that is that the flow of
12 information, all right, leads -- you know,
13 puts the funds in a position where they're
14 getting information too soon and that that
15 information, you know, makes it possible for
16 the fund to be -- you know, to do -- to get
17 front run or the investment manager to front
18 run. So, you know, whereas in the old days
19 you would never -- you had no idea -- even
20 like if you're an investor of Paul, Tudor,
21 Jones you get a two page sheet once a quarter
22 that tells you what your equity is, but you
23 have no idea what the hell he bought or sold.
24 So one of the concerns that the commissioner

1 has, as I said, is you know -- is had over
2 the -- over the recent years now is -- is the
3 concern of do -- do the -- do the investors
4 in the fund know what the fund is doing.
5 Like do you -- would you call up your
6 investors even in Fairfield and say Madoff is
7 getting into the market, you know, and it
8 would be the same thing with the derivative
9 dealer. You know, you call up the derivative
10 dealer says, okay, I'm going to enter the
11 market tomorrow and they can go -- and they
12 know that we buy typically the S&P, they go
13 out and run in front of it. So, you know,
14 the secrecy as to information is a key issue
15 for everybody and from your standpoint yours
16 should be basically I don't know about -- I
17 don't know about these trades until after the
18 trades are executed and my job is then just
19 to monitor and see what the performance of it
20 is and to make sure that the securities that
21 we -- that was -- that was supposed to be in
22 the model are in the model.

23 MR. VIJAY: Understood, that makes sense.

24 And Bernie, is there any issue in your mind

1 about -- about information getting out to
2 clients after we've already been invested but
3 prior to an exit?

4 MR. MADOFF: No, not with you -- not with
5 you it is because everybody knows basically
6 that the strategy involves buying the top 50
7 stocks in the S&P.

8 MR. VIJAY: Right.

9 MR. MADOFF: Okay, so they know it -- you
10 know, they know the stocks that we're going
11 to buy, we're in the S&P, you know, and they
12 -- they know that eventually we're going to
13 come out of the market, but you know we will
14 never tell them -- you know, I mean, you
15 don't know when we're going in -- out of the
16 market or when we're coming into the market,
17 you never do.

18 MR. VIJAY: Right, right.

19 MR. MADOFF: You know -- you know, the --
20 so that's -- we don't -- we don't have a
21 concern about it because as far as we're
22 concerned there's nothing that any of your
23 clients could do, you know, that would hurt
24 us or hurt the strategy because they just

1 don't -- don't have the information, you
2 know.

3 MR. VIJAY: Understood.

4 MR. MADOFF: In the situation. Yeah,
5 they may know that you're in the market
6 because you've told them you were in the
7 market or because you sent out some stuff to
8 them, but the reality of it -- you know, so
9 they know they're in the market and they know
10 eventually they're going to come out of the
11 market. They don't know if we're going to
12 come out of the market in one week or in two
13 months. You just don't -- you know, they
14 just don't know that. So the -- let me just
15 go a little further, but feel free to ask
16 anything.

17 MR. VIJAY: Sure. I mean, that's the
18 main concern that seems to come up from the
19 commission over the last few times that they
20 met you. Are there any other concerns that
21 maybe are secondary or -- I should also know?

22 MR. MADOFF: Oh, I mean, I think that --
23 and these are concerns that necessarily
24 aren't ours or, I mean, issues that the SEC

1 had with us. It's -- it's knowledge that I
2 know because of my relationship with the
3 regulators and also because of -- you know,
4 common sense would tell you, you know, these
5 issues and that this would be -- this would
6 be the concern. It's the same -- it's the
7 same concern that they have with the -- with
8 the proprietary trading desks of firms. In
9 other words, you know, and the institutional
10 desk. I mean, Merrill Lynch -- this is from
11 the beginning of time. Merrill Lynch gets a
12 hundred thousand share order in IBM from
13 their institutional desk and the
14 institutional broker who got the order, you
15 know, and working the order tell the
16 proprietary trading desk at Merrill Lynch,
17 listen, I got a large buyer or order in IBM,
18 do they -- you know -- you know, do
19 something.

20 MR. VIJAY: Right.

21 MR. MADOFF: So this is -- you know, this
22 is -- you know, this is an old problem. It's
23 be -- it's more exacerbated now because of
24 the fact that you have so much hedge fund

1 activity. It's like 50 percent of the market
2 place and the hedge funds operate in totally
3 different ways than they used to. You know,
4 you have all these funds. You have -- it's
5 just it's changed the landscape and the
6 commission has no idea what the hell is going
7 on and of course they always think the worst,
8 which is what they're supposed to do. So
9 they always -- you know, they always assume
10 that somebody is sharing information and
11 giving it -- and what used to be, as I say,
12 basically, they just had to worry about the
13 brokerage firms running in front of a client
14 or they used to worry, for example, we -- our
15 market making orders, you know, department
16 gets orders, all right, so -- from A.G.
17 Edwards, Merrill Lynch or whatever. Does --
18 do we give that information to our
19 proprietary desk. Now the reality of it is
20 there's stupidity of -- and we answer those
21 questions all the time, every time we get an
22 exam, and the issue that is -- our market
23 making desk, the information that we get from
24 our orders is meaningless. I mean, they're

1 -- they're, you know, five hundred, eight
2 hundred thousand share orders. We're not
3 getting hundred thousand share orders. So
4 that is -- it doesn't -- even if we told the
5 proprietary guy that, yeah, we just got a
6 five hundred share order and they come in
7 every three second, less than three seconds,
8 what the hell they going to do with it? Even
9 when we had these -- a larger orders, our
10 time slicing orders, those -- those -- we
11 have automatic lock out procedures in our --
12 where our system locks out the firm from
13 trading at the same time that we're working
14 those orders and so on and so forth, and the
15 orders that we get that we think -- the
16 people that execute the orders for, let's say
17 for Fairfield, are totally, you know, aside
18 and separate. They never see -- no one in my
19 organization ever sees an order that we get
20 from Fairfield.

21 MR. VIJAY: So those people are they --
22 they're separate and Chinese walled away from
23 the rest of the market making business, okay.

24 MR. MADOFF: Yes.

1 MR. VIJAY: And how many people are on
2 that team right now?

3 MR. MADOFF: Okay, there's really only
4 -- I'm the only one that can make the
5 decision in our organization as to when to
6 get in and out of the market. We have one
7 other person, all right, that would make
8 decision when I'm (inaudible). There are a
9 number of us that discuss, you know, when we
10 should get in and out of the market, but I'm
11 the only one that pulls the trigger.

12 MR. VIJAY: Okay.

13 MR. MADOFF: Or if I'm not there,
14 someone else, but I'm always there. But
15 these -- this is type of -- this kind of
16 information is not information that you would
17 have any reason to have.

18 MR. VIJAY: Okay.

19 MR. MADOFF: And you don't -- you don't
20 want to -- you don't want to have that
21 information because -- and so -- and what
22 they do is, you know, the Commission when
23 they ask questions they try and draw out
24 information. You know, that's what they try

1 and do. Even though they should -- they have
2 no reason to have it -- just hold on one
3 second.

4 (On Hold.)

5 MR. MADOFF: Hi, hello?

6 MR. VIJAY: Yeah, we're here.

7 MR. MADOFF: So the -- you know, the less
8 that you know about how we execute, and so on
9 and so forth, the better you are other than,
10 yes, you could -- you know, you could -- you
11 know, if they asked do you know that Madoff
12 -- do you know if Madoff has Chinese walls,
13 and you say, yes, look -- you know, your
14 position is say, listen, Madoff has been in
15 business for 45 years, you know, he executes,
16 you know, a huge percentage of the industry's
17 orders, he's -- you know, he's a well known
18 broker. You know, we make the assumption
19 that he's -- he's doing everything properly.
20 Yes, we know he has -- you know, as part of
21 our normal relationship, we know that he has
22 Chinese walls between the various business
23 lines of his firms, but as to who executes
24 the orders in our organization, how we

1 execute the orders --

2 MR. VIJAY: That's not going to come up.

3 MR. MADOFF: So then other than the fact
4 that you know that we use a model to execute
5 those -- to execute your strategy with them,
6 that's really all that you really want to
7 know because you don't want to have a
8 relationship with us that is more than it is,
9 and that that's -- and that's why we designed
10 it that way, that's why we, for example,
11 never see your clients. We have in the past,
12 you know, on occasion but we never really saw
13 the individual clients, we would see some of
14 the -- we used to see some of the banks that
15 you used to deal with, you know, and I used
16 to -- that's why I never anybody because one
17 of the concerns -- the other concern the
18 commission has is do -- do the executing
19 brokers -- and we're not even a prime broker.
20 I know you refer to us as a prime broker, but
21 a prime broker like Morgan Stanley is
22 basically these guys do capital introduction.
23 They do margin lending. They do all sorts of
24 other things. They give you free rent. They

1 give you all of these things. We don't do
2 that. We're -- we -- our role has always
3 been defined as the executing broker for our
4 clients, whether it be A.G. Edwards or
5 whether it be Fairfield Century that we're
6 working on on orders from them. We never
7 execute any other orders that you have, for
8 example, in any of your other fund business.
9 We -- you know, our relationship is strictly
10 execute the split strike conversion orders
11 that -- that we execute for you and that's
12 it. So it is -- it's not -- you know, we you
13 know are not out -- one of the other concerns
14 they used to have is does the executing
15 broker get directed brokerage. You know,
16 like do you -- you know, do you -- do we
17 execute other trades for you be compensated
18 in that, and you know that way. Is there any
19 soft dollar arrangements? There's none of
20 that. Do we do any marketing for you? Do we
21 do -- do we provide you with any other
22 research, any of that? We do not do that.
23 Other prime brokers do all of that stuff and
24 all of those things, relationships are -- are

1 concerns for the commission. So we -- we
2 have a very defined role and function in how
3 we operate for -- for you or anybody else,
4 and that is we are the executing broker.
5 Yes, you know, we're the -- it's our
6 strategy, it's our motto and our compensation
7 is strictly the commissions that we generate
8 from the orders, and that is -- that's it.
9 There's no other relationship involved. So
10 any questions that they would ask you about,
11 you know, how we execute the transactions and
12 this and that, that's not something that
13 we've ever shared with you nor would we have
14 any reason. We don't market you. We don't
15 -- we don't -- you know, we don't know who
16 your clients are. We don't discuss anything
17 with your clients. We don't speak to them.
18 You know, let me just see if there's any
19 other questions. I'm trying to cover a lot
20 with you. We don't know who your clients
21 are. If they ask you, you know, do you know
22 who else we execute these trades for, you
23 say, well, we know we got -- the strategy is
24 used by other funds, but you don't -- you

1 know, you don't know the amounts, you don't
2 know who because we don't discuss that with
3 -- we've never discussed that with you and we
4 don't intend to. So you can say, yeah, we
5 know -- you know, there are other funds that
6 execute this strategy through Madoff, but you
7 don't know the size, you don't know the
8 arrangement, you don't know the thing -- you
9 know, you assume is basically the same as
10 yours are, which it is.

11 MR. VIJAY: What if the question comes up
12 whether we -- we're comfortable or we can
13 verify that we're getting sort of a pro rata
14 allocation based on our assets, other
15 particular execution in or out --

16 MR. MADOFF: You can say that you -- that
17 we've -- that we've told you, which is the
18 case, that everybody gets a pro rata
19 allocation.

20 MR. VIJAY: Okay.

21 MR. MADOFF: How do you know that? You
22 don't, okay, but that's -- you know, that's
23 what we've told you.

24 MR. MADOFF: That's the arrangement.

1 MR. MADOFF: That's the way it is, so if
2 we -- if we have, you know, eight billion
3 dollars to go out and put to work, and we go
4 into the market and we only buy two million
5 the first day, then everybody gets 20 percent
6 of the allo -- you know, it's your fair share
7 of allocations. All you have to know is that
8 -- that -- that everything is allocated on a
9 pro rata basis based upon all of our clients,
10 and that's -- that's the way all brokers
11 work. So and again, you know, they don't --
12 you know, you don't have to be too brilliant
13 with these guys because you don't have to be,
14 you're not supposed to have that knowledge
15 and, you know, you wind up saying something
16 which is either wrong or, you know, it's just
17 not something you have to do. So -- and I'm
18 not -- I'm not telling you to conceal
19 anything. I'm telling you, you know, that
20 there are things that you don't -- one of the
21 problems we've had in the past is people go
22 out and they -- they, you know, even -- I'm
23 talking about like with you where guys write
24 things in a document or say things which is

1 not really -- which is not a hundred percent
2 the case, and I'll get into that in a little
3 while when I go through your notes. I'm just
4 trying to cover the stuff that I --

5 MR. VIJAY: Sure.

6 MR. MADOFF: First, okay, so we don't
7 market. You don't know the exact amounts on
8 what we trade for others. We're the
9 executing broker. We don't do any other
10 business with you. There are terms and
11 conditions on the options just like there are
12 on the equity. Yup, and the options are not
13 part of the model anymore. I went over the
14 allocation. Okay, let me just get into the
15 notes that you guys put together. Ross, you
16 can leave the law profession now, you'll be a
17 money manager.

18 UNIDENTIFIED MALE: Well, that's where
19 the guy trained, right, he was on the options
20 floor.

21 MR. MADOFF: Right, okay, the fund
22 strategy is -- that's fine. The relationship
23 that's all fine. Okay, the guidelines --
24 yeah, okay, we covered. That's fine. I told

1 you you don't have to make the statement
2 there's no front running possibility, that's
3 assumed. Okay, on the -- the split strike
4 strategy objective, okay. The objective of
5 the fund is to achieve capital appreciation,
6 okay, I would take out -- yeah, it's
7 submitting it anyhow, but don't say --
8 consistent monthly returns.

9 MR. VIJAY: Okay. You can delete that,
10 yeah.

11 MR. MADOFF: By identifying any profiting
12 from (inaudible) of large cap fund, that's
13 okay. You know, it's basically because, you
14 know, the consistent monthly returns is not
15 necessarily --

16 MR. VIJAY: Our objective as such.

17 MR. MADOFF: A consistent, and it's again
18 it's, look, this strategy -- and I've had
19 conversations with the commission two years
20 ago when they sent around inquiries on how
21 all -- you know, executing brokers, broker
22 dealers were dealing with funds and what the
23 strategies they use for the funds and what
24 the role is and so on and different types of

1 strategies and so on, and they're aware of
2 the fact that we do this -- that we do this
3 strategy for you and for others, right, and
4 basically, you know, the way we describe the
5 strategy, which is the case, is it's a
6 strategy that is -- that, you know, involves
7 putting on a bas -- buying a basket of
8 securities that replicate the S&P, all right,
9 one hundred. And, you know, according to a
10 -- the pre-defined parameters and models, and
11 that's -- that's (inaudible) that takes care
12 of the discretionary issue. And the purpose
13 of the strategy is to take advantage of an
14 upward move in the market, all right, that's
15 -- and the -- you're buying the securities
16 that are basically going to move with the
17 S&P, all right, and that that -- that strat
18 -- that basket of securities can be hedged
19 using broad based index options, all right,
20 to -- you know, to put a collar to limit the
21 risk of the strategy, all right, by hedging
22 it. You know, these basket strategies, you
23 know, are not unique to us. The model is
24 unique to us, but some people will buy the

1 whole S&P, you know.

2 MR. VIJAY: Can I ask you, is it part of
3 the model, is there any sort of decision
4 between stock A and stock B and the overall
5 purpose is obviously to replicate the
6 performance of the index and to track it very
7 closely, but you know is it -- is it a pre-
8 standard if the market capital were to index
9 that your really just looking for the largest
10 market caps and going down that list?

11 MR. MADOFF: In other words, it is --
12 it's important that the -- that we buy --
13 what our model defines of just, you know,
14 certain types of securities and certain
15 capitalization. So it's not that we can --
16 we do not care whether we think IBM is going
17 to move up more than General Electric and so
18 on. This is a market strategy that is based
19 upon the overall movement of the market. So
20 we are basically -- if we wanted to do a pure
21 play we would buy all 100 S&P securities, but
22 the problem with doing that the more you buy
23 the more your commission costs are and the
24 more cumbersome the strategy is. So the idea

1 is to basically buy a basket of securities
2 that's going to have a 95 percent correlation
3 and so the model dictates -- and, again,
4 they've seen these parameters, so they know
5 what the parameters are. All right, they --
6 they -- so we're not trying to pick General
7 Electric because we like General Electric.
8 We're trying to -- to, you know, if the
9 market -- if the market's going to move two
10 percent in a particular day and we -- we want
11 to be able to have a basket that's all --
12 that's going to follow that move as closely
13 as possible, and the reason -- because we --
14 we're not trying to -- we're not trying to
15 pick one stock that's going to out perform or
16 possibly under perform the market. So, yes,
17 it's basically the same securities all the
18 time because those are -- those cap waitings
19 are built into -- are built into the S&P.

20 MR. VIJAY: Right.

21 MR. MADOFF: All right, and you can --
22 you can either hedge it or not hedge it. If
23 you wanted to be open ended both on the
24 upside and the downside, you cannot hedge it.

1 We -- we don't believe in not hedging, and so
2 we'll -- we'll hedge it with -- with the --
3 with a broad base -- with a broad base index
4 with certain parameters below the market,
5 they have to be out of the money, you know,
6 on both sides and so on and so forth. But,
7 again, that is not something, so you
8 understand, that they -- you know that you
9 have to -- yeah, if you have -- you know,
10 you're not the one that's implementing the
11 strategy and you're not even the one that's
12 determined that this is a great strategy or
13 not. I mean, this fund has been using this
14 strategy for 15 years.

15 MR. VIJAY: Right.

16 MR. MADOFF: You know, so this is -- you
17 know. this strategy was put on long before you
18 even showed upon the scene. You know, and
19 this is a -- you know, this is not a strategy
20 that is a unique strategy. It's a market
21 index strategy and the skill of us, the skill
22 of Madoff is knowing when to get into the
23 market and get but of the market. That's the
24 role we play. I mean, that's the reason you

1 choose us as opposed to some other guy.

2 MR. VIJAY: That is the interesting
3 question, but I understand that it's not
4 going to be -- I mean, wouldn't anticipate
5 that will be something that the SEC is
6 interested in or at least with this
7 discussion with us. So, I mean, it's fair to
8 leave that out or if it comes up, you know,
9 to simply --

10 MR. MADOFF: Look, you're not --

11 MR. VIJAY: Hotline our role and defer
12 that question to you if --

13 MR. MADOFF: I mean, exactly. That's not
14 a -- as I say, you know, look you never know
15 what they're going to ask because these guys
16 they thought -- it's a fishing expedition.

17 MR. VIJAY: Right.

18 MR. MADOFF: That's what they do, okay.
19 So, you know, they typically -- you know, we
20 run through this all the time. The guys come
21 in to do a books and records examination and
22 they -- they whatchamacallit -- you know,
23 they ask you a zillion different questions
24 and we look at them sometimes and we laugh,

1 and we say are you guys writing a book? And
2 we say, you know, and they know that brokers
3 -- you know, because these guys they work for
4 five years at the commission then they become
5 a compliance manager at a hedge fund now.

6 MR. VIJAY: Right.

7 MR. MADOFF: Or they -- they go work for
8 proprietary trading desk. Nobody wants to
9 stay there forever. So nobody wants to give
10 them that information, and you know it's none
11 of their business. That doesn't prevent them
12 from asking it, and they'll say, you know,
13 well, we just want to know -- you know, about
14 the strategy. They know about the strategy.
15 You know, they should. You know -- you know,
16 the issue -- I'm telling you the issue here
17 is strictly of -- this is a front -- my guess
18 would be, I don't know for sure, but I -- you
19 know, my guess would be this is an issue of
20 front running. Is there a relationship
21 between Madoff -- you know, in your situation
22 and some of the other funds? Does he
23 participate in the other funds? Is he an
24 investor of yours? Does he share in any

1 other profits? You know, all of those types
2 of things. So the -- when the -- but if they
3 ask questions about the strategy, the
4 strategies are -- you know, they know the
5 answers that -- you know, maybe these girls,
6 these lawyers don't know it, but someone
7 there knows it. The -- you know, and again
8 it's not -- look, you have to remember that
9 if you're a typical -- I don't know how you
10 work with your other funds, these other
11 seedling funds or relationships that you have
12 with these people, but the -- typically -- I
13 mean, you'd be shocked at the lack of
14 knowledge of the typical investment manager
15 or fund manger of the fund or funds based
16 upon the primary fund they invested. You
17 know, they look at a fund, they know the
18 basic concept of the fund. You know, they
19 know, you know, if the guy's a -- but if you
20 think that somebody that's an investor with
21 [REDACTED] in Sachs Capital knows what the
22 hell his strategy is, it changes everyday,
23 you know, and what he's investing in. They
24 don't. They're basically just -- they're

1 chasing performance and they're looking at a
2 track record of a particular strategy and
3 they're going in -- into that strategy. I
4 mean, so -- I mean, when we -- when asked
5 what our role is with these various funds in
6 the past, we said the same thing a hundred
7 times, you know -- you know, we're the
8 executing broker. Yes, we're the one that,
9 you know, put on the strategy and we are
10 rollers, we're good market timers. Nobody
11 likes to use the term market timing anymore
12 because it got tainted because of the mutual
13 funds --

14 MR. VIJAY: Right.

15 MR. MADOFF: But trading in and out of
16 the market is timing, okay, so what the -- if
17 they ask, you know, how does Mad -- do you
18 know how Madoff decides when he's going to go
19 in the market and out of the market, which is
20 a question people always ask me, not only --
21 and I'd say, you know, I'm not going to share
22 that information with you, there's all sorts
23 of -- we have -- you know, obviously, a lot
24 of black box technology, momentum models and

1 all sorts of things that tell us when to get
2 in and out of the market. A regulator would
3 say is part of your information coming from
4 orders that you get from other brokerage
5 firms or institutions or -- the answer is,
6 no, that's illegal. No, we don't -- that's,
7 you know, in case we -- should we -- in case
8 someone never told you guys, you know, that's
9 -- you know, that's not something you're
10 allowed to do. So how do we determine how we
11 get in and out of the market, whether this is
12 a good time to put the strategy on, it's
13 based upon our feeling that the -- that the
14 market is going to move up, and that this is
15 a, you know, a time to be in the strategy and
16 the strategy is going to follow the market.
17 As to when we -- how we exit the market, by
18 the way, the model determines that. You
19 know, we don't get out of the market when we
20 think the market is -- is necessarily going
21 to go lower. That's a fallacy that some
22 people think. Basically the model is
23 programmed -- this is not something you have
24 to --

1 MR. VIJAY: No, this is just us, yeah.

2 MR. MADOFF: But the model is programmed
3 that once certain parameters are broken it
4 automatically generates, you know, a sell
5 order to exit the market. So we -- we're
6 going to stay in the market as long as the
7 parameters -- the model does what it's
8 supposed to do.

9 MR. VIJAY: Even if we're, you know, like
10 two strikes above -- above the call strikes?

11 MR. MADOFF: Right, so there are certain
12 triggers that are built into the model.
13 Again, none of which you have great knowledge
14 of, but the model determines when we get into
15 the market, you know, and determines when we
16 get out of the market. You have various
17 models that determine that or various systems
18 that determine that. So let me just finish
19 this thing. So there's no consist -- we took
20 off.

21 MR. VIJAY: Yeah.

22 MR. MADOFF: On the split strike strategy
23 E, okay, the simultaneous purchase. I know
24 you keep saying that in your documentation,

1 but again that was -- you just have to -- you
2 don't have to say simultan -- you just say
3 the purchase of S&P put options. This is --
4 I have no idea what the last is or not. The
5 rest of it -- it's a -- okay, on F, the
6 market risk --

7 MR. VIJAY: Right.

8 MR. MADOFF: Okay, you -- where you go
9 onto say in brackets, which may benefit the
10 fund in rising markets, you see where --

11 MR. VIJAY: Yeah, I'm with you on that
12 point.

13 MR. MADOFF: That should be taken out,
14 the whole thing after that. The minimum
15 correlation levels be breach, remedial action
16 --

17 MR. VIJAY: Right.

18 MR. MADOFF: Because that's --

19 MR. VIJAY: That was all something in the
20 prior trading authorization, right --

21 MR. MADOFF: Right. You basically -- all
22 you have to basically just, you know, say is
23 that the market risk is obviously that the
24 correlation -- that the -- that the basket --

1 the market risk is the fault that we -- that
2 number one put on -- these are -- you know,
3 we put on a position and the market goes down
4 and it's a bullish -- you know, we're looking
5 for the market to go up and the market goes
6 down. So if -- if -- if the strategy is put
7 on -- is put on and you long the market
8 because you're basically always long in the
9 market even though you're limited -- you're
10 by the puts and by the calls. Basically if
11 -- the strategy is implemented because the
12 market -- because the -- Madoff thinks the
13 market is going up, and the market goes the
14 other way, you know, you're going to lose to
15 the difference of the strike price of the
16 put, and --

17 UNIDENTIFIED MALE: And the second --

18 MR. MADOFF: And, you know, so that's --
19 and the second is that the correlation
20 somehow or other breaks down the 95 percent
21 correlation breaks down, but then you'll --
22 the strategy is going to be sold, it's going
23 to be exited, but there's still going to be
24 some -- you know, some basic -- look, as far

1 as they're concerned, the -- any market
2 strategy has a certain degree of risk, even
3 if you have puts on it you have a -- you
4 know, as they say, the correlation cannot --
5 cannot hold and by the time you exit the
6 strategy you're going to lose the difference
7 between the correlation. It's never going to
8 be major, but you know it's not -- it's a
9 hedge strategy so therefore, you know, the
10 market risk is not that issue, and they're
11 not even going to get into that. They
12 shouldn't be getting into that because, you
13 know, as I mentioned to, I guess, Mark, when
14 I spoke to him last -- you're still there,
15 Mark, right?

16 MARK: I'm here, Bernie.

17 MR. MADOFF: Okay, is that you know one
18 of the -- one of the concerns that everybody
19 had with the SEC looking at all of these --
20 you know, the regulation of hedge funds was
21 that they were -- that they were going to go
22 too deeply into the strategies and that they
23 were going to inhibit everybody from using
24 the strategies, and they swore to everybody,

1 I mean not literally, but basically they
2 assured Greenspan and the industry that they
3 were not interested in the strategies, that
4 that wasn't what they wanted. They just
5 wanted to be able to -- to make sure
6 primarily that what they were telling clients
7 in their documentation was the case, that
8 they weren't saying they were in the stock
9 market strategy when they were in
10 commodities, and that they were -- the
11 valuations were correct that they were
12 reporting their performance was accurate and
13 things of that sort. They said they really
14 did not have any business going into a -- or
15 weren't going to judge what people's
16 strategies were or whether they were --
17 strategies made any sense or not, but they're
18 full of shit, to describe it. Because as you
19 can see, if that was really the case, then
20 they wouldn't be -- they wouldn't ask you
21 anything about a strategy. They would just
22 say, okay, you know, this is the -- you know,
23 the strategy we use, it's an equity strategy
24 and we're buying equities, we're not buying

1 soybeans. So, you know --

2 MR. VIJAY: I know it likely won't come
3 up and this is just more for our own
4 background, but have you ever been asked or
5 have you ever considered, you know, given --
6 given your models and your knowledge in 15
7 plus year history of sort of inverting it and
8 putting on a bear spread, would it work or
9 would it not?

10 MR. MADOFF: You could. I mean, you
11 could do -- you could do -- you know, what we
12 call a back spread.

13 MR. VIJAY: Right.

14 MR. MADOFF: You know, you could do that.
15 You could also over weight the strategy with
16 puts.

17 MR. VIJAY: Right.

18 MR. MADOFF: There's lots of different
19 things that you can do, but basically we
20 found over -- and we used to do that years
21 ago, but we found that the best way to avoid
22 market risk is to be out of the market.

23 MR. VIJAY: Right, rather than --

24 MR. MADOFF: Rather than to try and --

1 rather than try and make money in a down
2 market because that's too -- it's just too
3 difficult.

4 MR. VIJAY: Mm-mm.

5 MR. MADOFF: There's not enough liquidity
6 when you want to do that, so basically the
7 strategy is when we like the market we're in
8 the strategy. When we don't like the market,
9 we're out of the market.

10 MR. VIJAY: Right.

11 MR. MADOFF: You know, the -- I think --
12 let me just see. I think -- I don't -- I
13 think I pretty much covered everything. Do
14 you have --

15 MR. VIJAY: One thing we didn't include
16 on the sheet because I -- you know, we
17 thought we're just here to talk about it
18 verbally, if the conversation with the
19 commission goes in this direction, we'll say
20 about, you know, what sorts of activities or
21 oversight do we actually, you know, conduct
22 based on the trade tickets, you know, the
23 sorts of things we talk about would be, you
24 know, the risk monitoring. We do feed the

1 positions into arithmetics --

2 MR. MADOFF: Fine?

3 MR. VIJAY: Risk reporting service and
4 so, you know, we do monitor the exposure by
5 -- by sector, the Greeks, you know,
6 sensitivities in the data as well as
7 (inaudible). That's all I think safe stuff,
8 the standard stuff. We do monitor on a daily
9 basis the trading activity against -- or the
10 positions against, you know, the thresholds
11 that we've outlined in the operating
12 agreement or the trading authorization, so
13 that's why it's good to have this updated
14 one, and any time, in fact, that you know
15 you're updating that document it would be
16 great to get a copy.

17 MR. MADOFF: We should have -- nothing
18 changed in the -- the reason -- the reason
19 you probably never got one, and we did send
20 them out, I wasn't sure whether you got one
21 or not, but your stuff goes different places,
22 but the parameters are identical. You'll see
23 if you look at the two documents nothing is
24 changed in them, it's just it was there -- in

1 other words the parameters of the options are
2 the same and the parameters of the equities
3 are the same. That hasn't changed at all.
4 It is just, as they say, the -- it really
5 should not -- it really never should have
6 been part of a model document because the
7 purpose of this document was twofold. Number
8 one, to establish what the parameters are,
9 and so that we did not have discretion that,
10 you know, we've agreed these are the pre-set
11 parameters and we've agreed to --

12 MR. VIJAY: Abide by them.

13 MR. MADOFF: To abide by them, and it's
14 -- and when you see the ones for the -- what
15 we call the terms and conditions for trading
16 the -- trading the options, those parameters
17 are the same, but the issue would be -- or
18 made -- the other issue that we had was
19 wanting to assure ourselves that if all of a
20 sudden somebody gave this -- we found another
21 fund or another broker that was -- that was
22 not our client executing the same strategy
23 using our model, and again as to what the
24 value is or not, who the hell knows because

1 the reality of it it's our timing that's
2 really the issue and our execution capability
3 that's the advantage that we have, but we
4 wanted that. But the -- so the document --
5 the model will hold up to intellectual
6 property as it is to the equity side, but
7 they said if you put the options in there,
8 you know, that would not hold up, that's too
9 broad and then what happens is it sort of --
10 it changed the intellectual property of the
11 (inaudible), so we just broke it -- we broke
12 it out and there's two -- two separate -- two
13 separate documents. And also the reason why
14 we couldn't make the option model or the
15 parameters of the model were exact was when
16 it comes to executing them it was because it
17 didn't have certain liquidity issues in there
18 which we use -- we use when we make that
19 determination. From their standpoint they're
20 not going to give a damn about one way or
21 another. You have a trading authorization
22 that tells you what your parameters are for
23 the equities and what -- you wouldn't use the
24 term trading authorization on the models

1 because they're what's known as standing
2 instructions, terms and conditions. I think
3 we label it -- yeah, terms and conditions for
4 option hedging strategies. You'll see that.

5 MR. VIJAY: Right.

6 MR. MADOFF: That you have -- as far as
7 they're concerned, you can say you have
8 standard -- you have standing parameters that
9 Madoff has to follow when he executes the
10 option trade and you also -- you have certain
11 directives that he has in trading the equity
12 -- the equity piece.

13 MR. VIJAY: I know the options are still
14 -- I mean, they are all OTC at this stage, so
15 --

16 MR. MADOFF: Yes, yeah.

17 MR. VIJAY: So liquidity is important on
18 the listed counterparts when you're
19 transacting the OTC -- OTC options contracts
20 and --

21 MR. MADOFF: Yeah, those are done with --
22 those are done with derivative -- with
23 derivative dealers.

24 MR. VIJAY: Dealers, okay.

1 MR. MADOFF: That basically European Bank
2 and derivative banks, dealer banks. I'm just
3 trying to think. What else. And, you know,
4 I guess -- who's going to be on the call
5 Amit, just you and Mark?

6 MR. VIJAY: I think Mark will be on it.
7 Both of us will be on it.

8 MR. MADOFF: Yeah, I mean, you know with
9 these guys basically anything you can't
10 answer you basically just say I -- you know,
11 don't answer. You know, you just say -- you
12 know, I'm just not knowledgeable in that
13 aspect of it. You know, if again, if they
14 wanted to know more about the strategy, you
15 know, they know they can call me.

16 MR. VIJAY: Right.

17 MR. MADOFF: They know I'm the executing
18 broker. They know that you're not making the
19 decisions, so you don't have to be -- what
20 you basically said just recently about how
21 you monitor the risk and you monitor all of
22 that stuff, that's important. That's what
23 your job is and that's what you do and that's
24 what -- that's what today quite frankly what

1 investment managers do in all of these fund
2 or funds. I mean, that's what they do. They
3 don't -- they're not -- they're not making a
4 decision when you invest whether or not the
5 strategy is a good strategy. I mean, Mark,
6 are you -- do you guys do that with your
7 other funds?

8 MARK: Yeah, we do and Amid is heavily
9 involved in all those risk calculations for
10 --

11 MR. MADOFF: No, I mean -- I know the
12 risk calculations, but I mean you're not
13 determining whether or not this strategy,
14 other than from a performance standpoint
15 you're not involved in the execution aspects
16 of any of these strategies.

17 MARK: Almost all of our funds are
18 managed outside, and we have a sub advisory
19 relationship. We have one small group at the
20 end of the hall that run Arlington for us and
21 that's two portfolio managers running on one
22 strategy.

23 MR. MADOFF: Good, right. So, whatever.
24 I mean, you know, look they say -- this --

1 this strategy -- the relationship that we
2 have is been an established relationship for
3 a long time. The commission knows how we --
4 how we operate, and even if they act stupid
5 on the phone call with you like they're just
6 trying to find out all of this information,
7 you know, they basically -- they should know
8 all of this unless it's just, you know, some
9 people that don't know anything, but I would
10 doubt it. You know, because they -- and they
11 may not know anything when they speak to you
12 tomorrow, but if they wanted to -- but I
13 think, as they say, I -- my guess would be
14 from what I think is going on here is
15 , basically that they are -- they're trying to
16 establish the relationship between us, and us
17 could be any broker, you know, and the funds
18 and the -- whether there's any sort of cross
19 dealing, any sort of sharing of profits that
20 they're not aware of, all of those things
21 because they -- the question that went around
22 on a number of occasions through every broker
23 that does business, you know, and I've seen
24 them. Just like when they sent that sweet

1 questionnaire, Mark did -- you sent me a long
2 time ago.

3 MARK: Yeah.

4 MR. MADOFF: And they sent others out,
5 you know, to people in general terms. The
6 questions they all asked were do you invest
7 in any of these funds, are you a limited
8 partner in any of them, do you get
9 (inaudible) any of this stuff, is there any
10 information sharing -- all of this type of
11 stuff is they want to know -- and you see the
12 reason why you got a follow up call about
13 wanting to have this call on Wednesday is --
14 and even the questions, like you know is
15 there -- is Madoff -- you know, are there
16 other funds that are involved and is he --
17 what's his relationship with the funds, with
18 Fairfield, you know, and all of this stuff is
19 -- is there some other way that we could
20 benefit from the performance that we give you
21 outside of getting the commissions on the
22 transactions, the -- are the penny a share
23 and the dollar a contract on that sort of
24 stuff, is there anything else that he can

1 get? You know, does he get any sort of
2 performance fee, is there any sort of other
3 issue like, you know, like that, you know,
4 that sort of thing? Even if you go back to,
5 you know, the issues like -- that other
6 people have raised questions about with this
7 whole fund area, that's what they're looking
8 at in here, and when they -- they -- when
9 they did an examination for us, they asked
10 all those questions, which is standard --
11 standard questions and the answer that I gave
12 them, which are the case, are exactly what
13 I'm -- I'm giving you and basically what you
14 should respond to them. Obviously, not that
15 we had a -- we didn't have a conversation on
16 all of this stuff, but that's basically --
17 that's what they expect to hear and but they
18 want to hear it with their own -- and I tell
19 you, they just -- it's a typical fishing
20 expedition that brokerage firms go through
21 all the time and now you guys are going to
22 wind up going through as a matter of routine.

23 MR. VIJAY: Okay, and so -- yeah, the
24 Commission's charged they might ask if we

1 feel that they're fair and reasonable and of
2 course at the levels that we talked about. I
3 think it was up to four cents, right, that's
4 what they are?

5 MR. MADOFF: Four cents a share, but
6 that's what we get on the equity
7 transactions, a dollar a contract on the --

8 MR. VIJAY: Okay.

9 MR. MADOFF: On the options and the
10 treasury bills are -- there's no fee on
11 those. Those are just cash management.

12 MR. VIJAY: This is a -- I mean, it's
13 useful because it does -- I mean, this
14 information is already known to us. There's
15 nothing new, it just -- it just clarifies and
16 put into context what the substance of their
17 inquiry might be, and I see that it's about,
18 you know, establishing the relationship and
19 the role that we each serve and -- you know
20 and --

21 MR. MADOFF: Have any opportunity for --
22 to misuse any information, and that -- you
23 know, as I say, that's why when the first
24 question you're asked, I mean, do we call you

1 up and tell you what's going to get into the
2 strategy or out of the strategy, that answer
3 should be clearly no.

4 MR. VIJAY: Absolutely no.

5 MR. MADOFF: I have to send you up the
6 new -- you know, the -- which is not really
7 new, but the -- the other trading -- modified
8 trading authorization directive and the terms
9 and conditions for the options, and as I say,
10 that's not something that you have to offer
11 to give them. They've seen it anyhow, but as
12 I say with them you don't offer anything
13 unless they --

14 MR. VIJAY: Unless they ask.

15 MR. MADOFF: You know, unless you have no
16 choice. Mark, is there anything else that
17 you --

18 MARK: No, Bernie, I should let you know
19 the call's now at 2 o'clock on Wednesday.
20 Amit will be up here in New York. We'll have
21 the binders in front of us, and I'll be able
22 to, you know, pass him an note or he can
23 write a question to me if we have any issues
24 that come up on the call, but we'll be --

1 we'll be together for that.

2 MR. MADOFF: Who changed the time; you
3 did or they did?

4 MARK: We did. I wanted to give Amit
5 time to get up here just so we could --

6 MR. MADOFF: Okay.

7 MARK: I have talked to him, it is a
8 voluntary call. It's not going to be
9 recorded. They may --

10 MR. MADOFF: I'm sorry, I didn't hear
11 you. What?

12 MARK: It's a voluntary call.

13 MR. MADOFF: Right.

14 MARK: It isn't testimony. They're not
15 -- it's not going to be -- there won't be a
16 transcript. There won't be a recording of
17 it. They may take notes, that's about it.

18 MR. MADOFF: Who told you that; they did
19 or you asked them?

20 MARK: They did. I asked him questions
21 about it.

22 MR. MADOFF: Oh, okay. Okay, as far as
23 you know it's just going to be -- did they
24 tell you who's going to be on the call or

1 they didn't?

2 MARK: They didn't. I'm -- I'll touch
3 base with her one more time and see who this
4 -- if this examiner's on and what role he
5 plays along with Simona and Melissa, the two
6 staff attorneys.

7 MR. MADOFF: Okay, well it's not going to
8 matter. You might as well wait until they do
9 it because I guess --

10 MARK: Okay.

11 MR. MADOFF: You don't want them to think
12 that you're concerned about anything. With
13 them you should -- your best off you just be,
14 you know, casual.

15 MARK: We're trying. We're trying to be
16 cool and to just cooperate and get it over
17 with and get them out of here. You know,
18 answer the question and move on.

19 MR. MADOFF: Okay, all right, so you'll
20 give me a call after it's finished?

21 MARK: Yeah. Amit and I will probably
22 let you know how it went.

23 MR. MADOFF: Okay, and it's going to be 2
24 o'clock on Wednesday, okay. What else, what

1 else, what else. Okay. Okay, I'm going to
2 send that stuff up to you and I'll check --
3 once you get it, walk, if you can give me a
4 call on my cell phone just to let me know
5 that you got it.

6 MARK: Sure.

7 MR. MADOFF: All right?

8 MARK: Okay, Bernie.

9 MR. MADOFF: Okay, great. Amit, take
10 care.

11 MR. VIJAY: Thank you, Bernie. Take care
12 then.

13 MR. MADOFF: Bye.

14 (Recording stops)

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